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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,378	08/26/2003	Alan M. Fogelman	407T-911270US	4598
22798	7590	11/04/2005	EXAMINER	
QUINE INTELLECTUAL PROPERTY LAW GROUP, P.C.			RUSSEL, JEFFREY E	
P O BOX 458			ART UNIT	
ALAMEDA, CA 94501			PAPER NUMBER	

1654

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/649,378	<b>Applicant(s)</b> FOGELMAN ET AL.	
	<b>Examiner</b> Jeffrey E. Russel	<b>Art Unit</b> 1654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,27-37,41-49 and 123-186 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,28,29,31-37,42-48 and 123-186 is/are rejected.
- 7) ☒ Claim(s) 27,30,41 and 49 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 August 2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20050520</u> . | 6) <input type="checkbox"/> Other: _____  |

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1. Applicant's election of the Invention of Group I, of atherosclerosis, and of SEQ ID NO:250 in the reply filed on February 28, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825 for the following reasons:

The Sequence Listing filed October 7, 2005 was not accompanied by a statement of no new matter as required by 37 CFR 1.825(a) and (b). A statement of no new matter occurs at page 17, first paragraph, of the amendment; however, this statement is limited to the claim amendments. Correction is required.

The Sequence Listing filed October 7, 2005 was approved by STIC for matters of form.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 28, 29, 31-37, 42-48, and 123-186 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Amended independent claim 1 permits both X<sup>2</sup> and X<sup>3</sup> to be Asp and/or Glu simultaneously, and permits both X<sup>2</sup> and X<sup>3</sup> to be Arg simultaneously.

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However, the original disclosure required that if  $X^2$  was acidic, then  $X^3$  had to be other than acidic, and if  $X^2$  was basic, then  $X^3$  had to be other than basic. See, e.g., page 4, lines 15-18, of the specification and originally-filed claim 1, lines 16-19. Accordingly, amended independent claim 1 embraces peptides which are not embraced by the original disclosure of the invention.

4. Claims 32, 35, 141-150, 169 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 32, line 3, and claim 35, line 3, are unclear as to whether methyl, ethyl, propyl, butyl, pentyl, and hexyl are all types of ester protecting groups, or whether “ester” is only modified by “hexyl” from the preceding list of alkyl groups. There is no antecedent basis in the claims for the phrase “said mammal” at claim 141, line 2. There is no antecedent basis in the claims for the phrase “said composition” in claim 169.

5. Claims 141-150 are objected to because of the following informalities: At claim 141, line 3, “one or more of” should be inserted before “the peptide” so that it is clear that not all of the peptides have to be administered simultaneously. Appropriate correction is required.

6. Applicant's arguments filed October 7, 2005 have been fully considered but they are not persuasive.

Applicants did not respond to the remaining rejections under 35 U.S.C. 112, second paragraph, repeated in section 4 above, or to the remaining claim objection repeated in section 5 above.

7. Claims 27, 30, 41, and 49 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

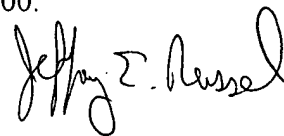
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8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (571) 272-0969. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Bruce Campell can be reached at (571) 272-0974. The fax number for formal communications to be entered into the record is (571) 273-8300; for informal communications such as proposed amendments, the fax number (571) 273-0969 can be used. The telephone number for the Technology Center 1600 receptionist is (571) 272-1600.



Jeffrey E. Russel  
Primary Patent Examiner  
Art Unit 1654

JRussel  
November 1, 2005